



Final Regulation Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC 5 -40
Regulation title	Requirements for Product Approval
Action title	Label Approval Revisions
Document preparation date	12/02/2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The proposed amendments remove certification and chemical analysis requirements for new beer and wine products proposed for sale in Virginia, and allow the use of resealable “growlers” for the sale of beer in all on- and off- premises beer retail establishments. The current regulation requires the submission to the Board of a certification or a sample for analysis for all wine and beer products prior to their sale in Virginia. Since the formulation of all products approved for sale in the United States is approved by the federal Bureau of Alcohol, Tobacco and Firearms, the Board considered and chose to adopt the alternative of relying on the federal approval rather than requiring a separate analysis for the purposes of the Commonwealth. Growlers are currently only allowed for use by brewpubs.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On October 23, 2004, the Alcoholic Beverage Control Board adopted a final regulation amending 3 VAC 5-40, entitled "Requirements for Product Approval."

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 4.1-103, subsection 9, of the Code of Virginia, authorizes the Alcoholic Beverage Control Board to "determine the nature, form and capacity of all containers used for holding alcoholic beverages to be kept or sold under this title, and prescribe the form and content of all labels and seals to be placed thereon." Section 4.1-111 authorizes the Board to promulgate reasonable regulations which it deems necessary to carry out the provisions of Title 4.1.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The goals of this regulation are:

1. To determine the nature, form and capacity of all containers used for holding alcoholic beverages, and prescribe the form and content of all labels and seals to be placed thereon.
2. To protect consumers of alcoholic beverages from misleading information concerning the identity or contents of alcoholic beverage products sold in the Commonwealth.

The regulation is effective in achieving the goals. It is essential to protect the health, safety or welfare of citizens, in that it ensures that alcoholic beverage packaging accurately reflects the contents, does not contain misleading information, and does not include obscene matter or representations intended or tending to promote overconsumption of alcoholic beverages. This action will remove unnecessary requirements and streamline the process of product approval, as well as provide additional container options for on-and off-premises beer licensees and their customers.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

In 3 VAC 5-40-20, the requirement for certification or analysis of wine products will be removed;

In 3 VAC 5-40-40, the use of growlers will be extended to all licensees with the privilege of selling beer for on-and off-premises consumption;

In 3 VAC 5-40-50, the requirement for certification or analysis of beer products will be removed, and the provision of subsection D.8. referring to the depiction of any athlete, former athlete or athletic team on beer labels will be modified to allow such depictions to the extent they are permitted in point-of-sale advertising under 3 VAC 5-20-10.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
 3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

The primary advantages of this action are to manufacturers, wholesalers, and retailers of wine and beer products. The removal of certification and analysis requirements will reduce the potential impediments to getting their new products to market. There are no disadvantages to the public or the Commonwealth, since federal registration requirements capture matters formerly obtained by the state analysis. Beer on- and off-premises retailers and their customers will also obtain the advantage of the option of using growlers, resealable containers, to sell beer not ordinarily available in bottles or cans.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change

There have been no changes made to the text of the proposed regulation since the publication of the proposed stage.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Walter Marston, Virginia Beer Wholesalers Association	Virginia Beer Wholesalers Association supports the proposed amendments.	

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
5-40-20		Certification or analysis of new wine products must be submitted.	No certification or analysis required. Chemical analysis not used or needed by Virginia ABC. Federal filing information is available.
5-40-40		Growlers may only be used by brewpubs.	Growlers may be used by any on-and off-premises beer retailer. No policy reason for current distinction.
5-40-50		Certification or analysis of new beer products must be submitted.	No certification or analysis required. Chemical analysis not used or needed by Virginia ABC. Federal filing information is available.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The proposed regulatory change will have no impact on the institution of the family and family stability.